# UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/891,337 | 06/26/2001 | Marcus Bryan Grande | AUS9-2001-0384-US1 | 2237 |

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
|---|---|
| 3639 | |

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 09/891,337 | GRANDE ET AL. |
| | Examiner | Art Unit | |
| | Freda A. Nelson | 3639 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on *20 September 2005*.

2a) ☐ This action is **FINAL**.　　　2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) *1,3-8,10-14 and 16-20* is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1,3-8,10-14 and 16-20* is/are rejected.

7) ☒ Claim(s) *3, 10, and 16* is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a) ☐ All　b) ☐ Some * c) ☐ None of:

　　　1. ☐ Certified copies of the priority documents have been received.

　　　2. ☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

## DETAILED ACTION

The amendment received on September 20, 2005 is acknowledged and entered.  Claims 1, 3-8, 14, and 17-20 have been amended.  Claims 2, 9, 15 and have been canceled.  No claims have been added.  Claims 1, 3-8, 10-14, and 16-20 are currently pending.

### *Response to Amendment and Arguments*

Applicant's arguments, filed September 20, 2005, with respect to 35 U.S.C. 102 rejections have been fully considered and are persuasive. The corresponding rejections of the previous office action have been withdrawn.

Claim rejection under 35 USC § 101 have been withdrawn in view of Precedential Decision by the Board of Patent Appeals and Interferences in case Ex parte Carl A. Lundgren (Appeal No. 2003-2088).

### *Information Disclosure Statement*

1.      The information disclosure statement (IDS) submitted on 07/09/2005 and 09/06/2005 are in compliance with the provisions of 37 CFR 1.97.  Accordingly, the information disclosure statements are being considered by the examiner. Copies of PTO-1449s are attached hereto.

### *Claim Objections*

Claims 3, 10, and 16 are objected to because of the following informalities:

In claim 3, line 2, "claim 2" should be "claim 1";

In claim 10, line 2, "claim 9" should be "claim 8"; and

In claim 16, line 2, "claim 15" should be "claim 14".

Appropriate correction is required.

## Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

Claims 3, 10, and 16 are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly

claim the subject matter which applicant regards as the invention.

Claim 3 is dependent upon claim 2, which was canceled;

Claim 10 is dependent upon claim 9, which was canceled; and

Claim 16 is dependent upon claim 15, which was canceled.

## Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described
as set forth in section 102 of this title, if the differences between the subject matter sought to
be patented and the prior art are such that the subject matter as a whole would have been
obvious at the time the invention was made to a person having ordinary skill in the art to which
said subject matter pertains. Patentability shall not be negatived by the manner in which the
invention was made.

Claim 1, 3-8, 10-14, and 16-20 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Saari et al. (Patent Number 6,338,046) in view of

Hernandez et al. (Patent Number 6,208,977).

As for claim 1, Saari et al. disclose a computer-implemented method of providing dynamic network pricing data, said method comprising:

calculating, by the network pricing computer, a network usage price in response to the determination; and applying the network usage price to a network session (col. 2, line 2-35; col. 5, lines 46-55).

Saari et al. does not disclose determining, by a network pricing computer, an amount of traffic on a computer network, wherein the determining includes requesting traffic data from one or more network devices and receiving the requested traffic data in response to the requests. Hernandez et al. disclose that an administrator can request that the collector and/or billing subsystems 37, 38 recalculate billing prices to track temporal changes in nominal utilizations $S_{12}$-$S_{22}$ (col. 7, lines 25-27; FIGS. 1B and 2A-2B); the collection units 32-36 periodically send their accumulated traffic data to a collector subsystem 37, i.e., a designated computer having a network Interface (col., 3, lines 46-48); and the collector subsystem 37 uses the traffic data to determine the average utilization S of each link, which is the measured used bandwidth over a period of time divided by the full and the collection subsystem 37 uses the data to determine the prices for transmitting data (col. 3, lines 46-56; FIGS. 1B and 2A-2B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Saari et al. to include the feature of Hernandez et al. in order to ensure data accuracy, eliminate duplication, and determine source and destination users.

As for claim 3, Saari et al. disclose the method computer-implemented as described claim 2 wherein the network devices are selected from the group consisting of routers, switches, and computer systems (col. 17, lines 4-16; FIG. 1).

As for claim 4, Saari et al. disclose the method as described in claim I further comprising:

identifying a client computer system corresponding to the network session (col. 7, lines 19-27); and sending the network usage price to the client computer system (col. 7, lines 19-27).

As for claim 5, Saari et al. disclose the method as described in claim 1 further comprising:

recording a session start time and the network usage price for the network session (col. 5 lines 33-45; FIG. 4);

identifying a session stop time for the network session (col. 5 lines 33-45);

determining an elapsed session time (col. 5 lines 33-45); and

calculating a session billing amount corresponding to the elapsed session time and the network usage price (col. 5 lines 33-45; FIG. 2) .

As for claim 6, Saari et al. disclose the method as described in claim 5 further comprising:

storing one or more session billing amounts for one or more users (col. 7, lines 19-27);

calculating an invoice total for each of the users based on each user's corresponding session billing amounts(col. 7, lines 19-27); and

preparing an invoice for each of the users, the invoice including each user's invoice total (col. 7, lines 19-27).

As for claim 7, Saari et al. disclose the method as described claim 5 further comprising:

writing a high priority header to one or more packets originating from a computer system corresponding the network session between the session start time and the session stop time (FIG. 2).

As for claim 8, Saari et al. disclose an information handling system comprising:

one or more processors (FIG. 1);

a memory accessible by the processors (FIG. 1)`;

a network interface connecting the information handling system to a computer network (FIG. 1); and

a network pricing tool to provide dynamic network pricing data, the network pricing tool including:

means for determining an amount of traffic on computer network (col. 2, lines 2-35; col. 4, line 3 through col. 5, line 55);

means for calculating a network usage price in response to the determination (col. 2, lines 2-35; col. 4, line 3 through col. 5, line 55); and means for applying the network usage price to network session (col. 5, lines 46-55).

Saari et al. does not disclose that the determining includes requesting traffic data from one or more network devices and receiving the requested traffic data in response to the requests. Hernandez et al. disclose that an administrator can request that the collector and/or billing subsystems 37, 38 recalculate billing prices to track temporal changes in nominal utilizations $S_{12}$-$S_{22}$ (col. 7, lines 25-27; FIGS. 1B and 2A-2B); the collection units 32-36 periodically send their accumulated traffic data to a collector subsystem 37, i.e., a designated computer having a network Interface (col., 3, lines 46-48); and the collector subsystem 37 uses the traffic data to determine the average utilization S of each link, which is the measured used bandwidth over a period of time divided by the full and the collection subsystem 37 uses the data to determine the prices for transmitting data (col. 3, lines 46-56; FIGS. 1B and 2A-2B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Saari et al. to include the feature of Hernandez et al. in order to ensure data accuracy, eliminate duplication, and determine source and destination users.

As for claim 10, Saari et al. disclose the information handling system as described in claim 9 wherein the network devices are selected from the
group consisting of routers, switches, and computer systems (col. 17, lines 4-16; FIG. 1).

As for claim 11, Saari et al. disclose the information handling system as described in claim 8 further comprising:
means for identifying a client computer system corresponding to the network session (col. 7, lines 19-27); and
means for sending the network usage price to the client computer system (col. 7, lines 19-27).

As for claim 12, Saari et al. disclose the information handling system as described in claim 8 further comprising:
means for recording a session start time and the network usage price for the network session (col. 5 lines 33-45; FIG. 4);
means for identifying a session stop time for the network session (col. 5 lines 33-45; FIG. 4);
means for determining an elapsed session time (col. 5 lines 33-45; FIG. 4); and
means for calculating a session billing amount corresponding to the elapsed session time and the network usage price (col. 5 lines 33-45; FIG. 4).

As for claim 13, Saari et al. disclose the information handling system as described in claim 12 further comprising:
means for writing a high priority header one or more packets originating from a computer system corresponding to the network session between the session start time and the session stop time (FIG. 2).

As for claim 14, Saari et al. disclose a computer program product stored on a computer operable media for providing dynamic network pricing,
said computer program product comprising:
means for determining an amount of traffic on computer network (col. 2, lines 2-35; col. 4, line 3 through col. 5, line 55);
means for calculating a network usage price in response the determination (col. 2, lines 2-35; col. 4, line 3 through col. 5, line 55);
means for applying the network usage price to network session (col. 5, lines 46-55).
Saari et al. does not disclose that the determining includes requesting traffic data from one or more network devices and receiving the requested traffic data in response to the requests. Hernandez et al. disclose that an administrator can request that the collector and/or billing subsystems 37, 38 recalculate billing prices to track temporal changes in nominal utilizations $S_{12}$-$S_{22}$ (col. 7, lines 25-27; FIGS. 1B and 2A-2B); the collection units 32-36 periodically send their

accumulated traffic data to a collector subsystem 37, i.e., a designated computer having a network Interface (col., 3, lines 46-48); and the collector subsystem 37 uses the traffic data to determine the average utilization S of each link, which is the measured used bandwidth over a period of time divided by the full and the collection subsystem 37 uses the data to determine the prices for transmitting data (col. 3, lines 46-56; FIGS. 1B and 2A-2B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Saari et al. to include the feature of Hernandez et al. in order to ensure data accuracy, eliminate duplication, and determine source and destination users.

As for claim 16, Saari et al. disclose the computer program product as described in claim 15 wherein the network devices are selected from the group consisting of routers, switches, and computer systems (col. 17, lines 4-16; FIG. 1).

As for claim 17, Saari et al. disclose the computer program product as described in claim 14 further comprising:
   means for identifying a client computer system corresponding the network session (col. 7, lines 19-27); and
   means for sending the network usage price to the client computer system (col. 7, lines 19-27).

As for claim 18, Saari et al. disclose the computer program product as described in claim 14 further comprising:
   means for recording a session start time and the network usage price for the network session (col. 5, lines 33-45; FIG. 4);
   means for identifying a session stop time for the network session (col. 5, lines 33-45);
   means for determining an elapsed session time (col. 5, lines 33-45); and
   means for calculating a session billing amount corresponding to the elapsed session time and the network usage price (col. 5, lines 33-45; FIG. 2).

As for claim 19, Saari et al. disclose the computer program product as described in claim further comprising:
   means for storing one or more session billing amounts for one or more users (col. 7, lines 19-27);
   means for calculating an invoice total for each of the users based on each user's corresponding session billing amounts (col. 7, lines 19-27); and
   means for preparing an invoice for each of the users, the invoice including each user's invoice total (col. 7, lines 19-27).

As for claim 20, the computer program product as described in claim 18 further comprising:

means for writing a high priority header to one or more packets originating from a computer system corresponding to the network session between the session start time and the session stop time (col. 13, lines 51-60; FIG. 2).

## *Conclusion*

The examiner has cited prior art of interest, for example:

1) Combar et al. (Patent Number 6,470,386), which disclose and integrated proxy interface for web based telecommunications management tools.

2) Porter (Patent Number 6,714,978), which discloses a method and system for processing records in a communications network.

3) Lee (Patent Number 6,757,737), which discloses an apparatus and method for providing measured rate system in IP network.

4) Ouellette et al. (Patent Number 6,321,259), which disclose an attribute inheritance schema for network switches.

5) Sabry et al. ( Patent Number 6,728,266), which disclose a pricing mechanism for resource control in a communications network.

6) Branstad et al. (Patent Number 5,533,021), which disclose an apparatus and method for segmentation and time synchronization of the transmission of multimedia data.
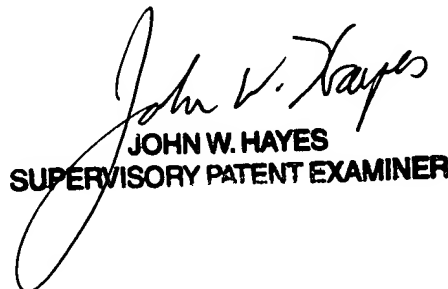
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 11/10/05

JOHN W. HAYES
SUPERVISORY PATENT EXAMINER